

November 21, 1974

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Mr. BUTLER. I yield to the gentleman from Illinois.

Mr. ERLBORN. Mr. Chairman, as I understand it, the purpose of the amendment is to protect, as an example, the file of the U.S. attorney or the solicitor that is prepared in anticipation of the defense of a suit against the United States for accident or some such thing?

Mr. BUTLER. That is the subject we have in mind.

Mr. ERLBORN. I appreciate the gentleman's concern. I think it is a real concern, and that protection ought to be afforded.

The only problem I find with that amendment is this: It would presuppose we intended the defining of "record system" to preclude that type of record. I do not think we did.

If these sorts of records are to be considered a record system under the act, then the agency would have to go through all the formal proceedings of defining the system, its routine uses, and publishing in the Federal Register.

Frankly, I do not think the attorney's files that are collected in anticipation of a lawsuit should be subject to the application of the act in any instance, much less the access provision. It is our concern in the access provision that it may then presuppose it is covered in the other provisions, and I do not think it should be.

Mr. BUTLER. Mr. Chairman, I share the gentleman's concern. When this amendment was originally drafted, it stated "access to any record" and we struck the word, "record," and inserted "information."

So we made it perfectly clear we were not elevating an investigation with the word, "record," to the status of records. We did want to make it clear there was not to be such access, because that access would be within the usual rules of civil procedure.

Mr. ERLBORN. Mr. Chairman, if the gentleman will yield further, it is the gentleman's contention, under his interpretation of the act, that the other provisions would not apply to the attorney's files as well; is that correct?

Mr. BUTLER. The gentleman is correct.

Mr. ERLBORN. I wonder if the gentleman would ask the gentleman from Pennsylvania (Mr. MOORHEAD) what his opinion is concerning that, just to clarify the record.

Mr. BUTLER. Mr. Chairman, I will yield to the gentleman from Pennsylvania for that purpose.

Mr. MOORHEAD of Pennsylvania. Mr. Chairman, I agree with the limitation which has been placed on the amendment by the gentleman.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from Virginia (Mr. BUTLER).

The amendment was agreed to.

AMENDMENT OFFERED BY MS. ABZUG

Ms. ABZUG. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Ms. ABZUG: Page 33, line 3, strike out lines 3 and 4.

(Ms. ABZUG asked and was given permission to revise and extend her remarks.)

Ms. ABZUG. Mr. Chairman, we are dealing in this bill before us today with the right to privacy and any exemption from the safeguard provisions of this bill must be the exception rather than the rule. It should be justified only where there are overwhelming societal interests.

What are the overwhelming interests of society that this exemption protects which would justify an infringement on individual liberty?

Under other exemption provisions of this bill, we have already protected from disclosure information related to law enforcement investigative matters and national security.

I have agreed to support such specific exemptions. But the general exemption as to all records, regardless of what they contain, maintained by the CIA, goes too far. By allowing the CIA to exempt all systems of records, even those which contain no sensitive data, we are unnecessarily denying individuals the rights guaranteed by this bill and indeed rights guaranteed by the Constitution.

There is grave danger inherent in granting any such broad exemption. No agency should be given a general license to exempt any and all of its records or record systems.

Rather than base exemptions on the functions of an agency which maintains records, we should define exemptions, as we tried to in this bill, in terms of the kind of data sought to be protected from disclosure. We have done this in subsections (k) and (l) (1), and (2) of the bill.

If the records of the CIA contain sensitive material, these records will be protected from disclosure by the specific exemptions already referred to, information related to either foreign policy or national defense or related to investigatory material which is being compiled for law enforcement purposes.

We would weaken this bill if we established a precedent by allowing an agency to exempt itself entirely from requirements that would protect and reinforce the fundamental constitutional rights of privacy.

By setting up a general exemption guaranteeing and allowing the CIA to exempt even sensitive records from virtually every provision of the bill, the bill goes far beyond what is necessary to protect such records from disclosure. Why should not the agency be required, for example, to keep records which are accurate, timely, and relevant, which are requirements of this bill?

Why should the agency be exempted from a bar against maintaining political or religious data if other agencies are not, and why should individuals be denied rights to civil remedies and court review?

This is the effect of the "general exemption" section of the bill, which goes far beyond the "specific exemption" section in allowing agencies to disregard the safeguard provisions of the bill.

I might tell the Members that the

other body's bill does not contain any such general exemption section. It provides solely for specific exemptions, with only two of the specific ones we have, by the way, and that is for national security and law enforcement purposes.

I urge that we strike this general exemption for the CIA since the CIA's sensitive records and activities are amply protected by other provisions of this bill.

To do otherwise would be to deny unnecessarily to one group of individuals the privacy rights protected by this bill.

Mr. Chairman, I urge that my amendment be adopted.

Mr. GUDE. Mr. Chairman, will the gentlewoman yield?

Ms. ABZUG. Yes, I yield to the gentleman from Maryland.

Mr. GUDE. I want to commend the gentlewoman for this amendment.

Certainly, there is no logic in gathering information, and regardless of its sensitivity, putting it off bounds merely because it happens to be stored within a particular agency.

The gentlewoman's amendment makes a great deal of sense, and I certainly urge its adoption.

Mr. KOCH. Mr. Chairman, will the gentlewoman yield?

Ms. ABZUG. I yield to the gentleman from New York.

Mr. KOCH. I also want to commend the gentlewoman from New York, who has pointed out this particular deficiency of this legislation, which I hope will be corrected.

Mr. ERLBORN. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, there are many reasons why I would oppose this amendment.

I think it is quite obvious that the activities of the Central Intelligence Agency are not the sort of activities that are supposed to be conducted in a fishbowl.

Let me make this one observation. Under this bill we are allowing any individual access to records that are maintained by the Government relative to himself. In other words, any person, any individual can go to the agency that is subject to this act and say, "I want copies of anything that you have relating to me."

In the committee we discussed whether we would extend this right to corporations. We decided we would not; we would grant it only to individuals.

We did not limit this access to U.S. citizens.

Just stop and think about this for a moment. The Central Intelligence Agency prepares and maintains files relative to people all over this country who are our potential or actual enemies.

We are not limiting access, under this law, to citizens so that Chou En-lai or whoever it might be could come over here and knock at the door of the CIA and say, "Under the new privacy bill, I want to see all the files that you have maintained concerning me."

I think this situation would be utterly ridiculous. The amendment ought to fall of its own weight.

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Ms. ABZUG. Mr. Chairman, will the gentleman yield?

Mr. ERLBORN. I yield to the gentlewoman from New York.

Ms. ABZUG. Mr. Chairman, I just want to refresh the recollection of the gentleman from Illinois about who is covered under this bill. We have a very specific definition of individuals who are granted rights under this bill and I will quote from subsection (a) (2)—Such an individual "means a citizen of the United States or an alien lawfully admitted for permanent residence." As far as I know Chou En-Lai is not a citizen of the United States or an alien lawfully admitted for permanent residence. This is just another big, big red herring.

Mr. ERLBORN. Then maybe it would be the Ambassador of Russia; who is to say? The fact is, we ought not limit the United States to carrying on the activities of the Central Intelligence Agency in such a way that its files are kept under cellophane.

Mr. HOLIFIELD. Mr. Chairman, I move to strike the last word, and I rise in opposition to the amendment.

Mr. Chairman, I realize that there are people in this country who have a great antagonism to the CIA. I might say that back in 1947 this committee handled the legislation that established the CIA in the Defense Department bill.

We are in a dangerous world, and other countries of the world are using all the methods that they can develop for the collection of information which happens to be favorable to their objectives. Many times those objectives do not coincide with the objectives of this country, so that we, likewise, in order to protect ourselves, are collecting information on these people overseas, or the emissaries who come into this country if it deals with the national security of the United States. I believe that the better part of valor right now is to leave this alone.

Ms. ABZUG. Mr. Chairman, will the gentleman yield?

Mr. HOLIFIELD. I yield to the gentlewoman from New York.

Ms. ABZUG. Mr. Chairman, I would just like to refresh the recollection of the gentleman from California, and since he is my honorable chairman I hesitate to do this, but, nevertheless, I have pointed out that the bill provides in section (k) (1) (2) for an exemption of anything which would in any way affect the national defense or foreign policy of this Nation, so that any of the national security or foreign policy records about which the gentleman from California has expressed some concern would be amply covered. No information which in any way affects the national security or foreign policy of this Nation could, under the specific provisions of section (k) of this act, be made available.

My objection to this general blanket exemption for the CIA is that there is much information, and I am sure the gentleman from California would agree with this, that the CIA collects about individuals that is totally unrelated to the national security functions of the CIA.

Mr. HOLIFIELD. I do not know that. I am not in possession of that knowledge.

Ms. ABZUG. Even if that were not so, if an individual seeks access to his or her records and the CIA makes a determination that access to those records would endanger our national security, then the agency would have the right to assert that reason for not providing access to the information.

All I am suggesting is that to single out one agency and exempt all its records, just because it is this agency, is quite contrary to what our purposes are, and to what our intentions are in this bill. I might also mention that the legislation in the other body has only the specific exemptions that I mentioned before. A blanket exemption for any agency—even or especially this one—has no place in this bill.

Mr. HOLIFIELD. Mr. Chairman, let me add that this agency is charged with the security of the United States in relation to its foreign policy, and therefore important to the United States. The agency does collect information on people who are emissaries from those nations that are here, and are acting in behalf of other nations, and I just do not believe that anyone has the right or should have the right to go in and expose the most sensitive area in the protection of our national security. Therefore I must oppose the amendment.

I think we are going pretty far in this bill, and I think this is just a little bit too far.

Mr. DELLUMS. Mr. Chairman, I would like to make a point of order, and I do so because I think this matter is of such importance and such gravity that it should not be disposed of by a handful of Members, and I note that there is not a quorum present on the floor.

Therefore, Mr. Chairman, I make the point of order that a quorum is not present.

The CHAIRMAN. Evidently a quorum is not present. The Chair announces that he will vacate proceedings under the call when a quorum of the Committee appears.

Members will record their presence by electronic device.

The call was taken by electronic device.

QUORUM CALL VACATED

The CHAIRMAN pro tempore (Mr. McFALL). One hundred and four Members have appeared. A quorum of the Committee of the Whole is present. Pursuant to rule XXIII, clause 2, further proceedings under the call shall be considered as vacated.

The Committee will resume its business.

The Chair recognizes the gentleman from Pennsylvania (Mr. MOORHEAD).

(Mr. MOORHEAD of Pennsylvania asked and was given permission to revise and extend his remarks.)

Mr. MOORHEAD of Pennsylvania. Mr. Chairman, I rise in opposition to the amendment offered by the gentlewoman from New York (Ms. Abzug). I do so with considerable regret, because of the great contribution that the gentlewoman has made in the drafting of this legislation. The gentlewoman was one of the authors

considered. But I think in this legislation we must take a step at a time in a delicate field like that involving the Central Intelligence Agency.

Let me explain to the Members that the CIA is not entirely exempt under this bill. The agencies listed under general exemptions are affirmatively subject to the major disclosure and the requirement section of the act. The CIA must follow the conditions of disclosure, or I should say nondisclosure, as enumerated in subsection (b) of the bill. This is a major provision of the bill with which the Agency must be in compliance—with what the Agency may or may not do with their records.

The CIA is also subject to subsection (e) (2), (A) through (F) to publish in the Federal Register at least annually a notice of the existence and character of each system of records. Thus, even under the general exemption sections, they must do this.

This covers two unique circumstances: First, the Central Intelligence Agency maintains various intelligence systems, as defined by the act. Those systems maintained by the CIA are primarily personnel records. By statute the Central Intelligence Agency is prohibited from releasing any detailed information on its personnel.

The committee does not feel it should repeal other statutes by implication. Let me say also that there was an earlier colloquy between the gentlewoman from New York and the gentleman from Illinois about who is covered by the act.

On page 21, line 14, in the definitions:

The term "individual" means a citizen of the United States or an alien lawfully admitted for permanent residence . . .

So, Mr. Chairman, I urge the defeat of the amendment.

Ms. ABZUG. Mr. Chairman, will the gentleman yield?

Mr. MOORHEAD of Pennsylvania. I yield to the gentlewoman from New York.

Ms. ABZUG. Mr. Chairman, I am very disappointed that the gentleman from Pennsylvania has to rise in opposition to my amendment. I disagree with him. I think this exemption is really out of line with the original purpose of the bill.

I had no recollection, by the way, Mr. Chairman, that the CIA ever requested this exemption, certainly not since the bill was clarified to apply only to citizens and permanent residents.

Although the gentleman has indicated what provisions the CIA, as an agency, might be subjected to, he has neglected to mention the more significant and meaningful provisions it will not be subjected to as a result of having its general exemption. I have already mentioned some of those basic provisions, such as the requirement of agencies to maintain accurate, relevant, and timely data, and I will not respect them all here.

There are many others such as this, so I do not think it is fair, even though the gentleman may oppose my amendment, for him, to suggest that a general exemption doesn't deprive individuals of basic rights provided by the act. In fact, one very seriously deprived group of individuals on whom the CIA

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may be keeping records which have nothing at all to do with the security of this Nation.

Mr. ECKHARDT. Mr. Chairman, I rise in favor of the amendment.

Mr. Chairman, I should like to clarify that other provisions of this bill fully take care of questions having to do with security. The bill provides two types of exemptions: First the general exemption of agencies. In fact, only one agency is generally exempted, the Central Intelligence Agency. This is in subsection (j), "General Exemptions."

But in (k), "Specific Exemptions," it is provided on page 34, item (1) that the records within the agency are exempted from this section if the system of records is, (1) subject to the provisions of section 552(b)(1) of this title."

Now, 552(b)(1) of this title is found in the present act, and what that says is:

This section does not apply to matters that are, (1) specifically required by Executive order to be kept secret in the interests of the national defense or foreign policy."

Executive Order 652, issued on March 8, 1972, and effective on June 1, 1972, exempts 37 agencies with respect to all matters having to do with national defenses or foreign policy. It includes, of course, the CIA. It includes the Atomic Energy Commission. It includes the State Department; it includes the Department of Defense; it includes the Justice Department.

I cannot see, for the life of me, why the CIA should be generally exempt from all provisions having to do with access if these other agencies, just as sensitive, are not also generally exempt. They deal with just as sensitive material in the area of national security as the CIA does. The point is, though, if we generally exempt the CIA from access, then the CIA does not have to come out and say that if they revealed the information, that they refuse access to, it would affect national defense or foreign policy, that it has to do with the security of the United States.

I happen to know of a case in which an employee of the CIA has been shabbily treated. I think the particular case did not have to do with security. It had to do with a girl. Some boss did not much like an inferior officer seeing her. But I shall not assert that as a fact here but as a hypothetical illustrating the evil of giving the CIA complete exemption from access provisions of this Act. The CIA can come in and say at any time, "This affects foreign affairs." But let us, at least, make them say that, because many people working for the CIA are subject to exactly the same discriminations as those working for other agencies. The CIA is going to be believed when they raise the contention that foreign affairs are affected, but at least let us make them come in and say it. Presumably, there would be some reluctance to lie about it. But if all they have to say is, "We are blanketly exempt from any access to the information which you seek," we are absolutely protecting them in matters in which the grossest discrimination could occur.

Let me just say once again that I am not talking in favor of opening up access to CIA's files with respect to matters of security, because the second exemption, the specific exemption provisions provided for in this act, refers to 552(b)(1). That says that nothing may be obtained which the Executive order requires to be kept secret in the interest of national defense or foreign policy and an Executive Order 652 has been issued and totally, blanketly covers all such matters pertaining to national defense and foreign policy.

The CHAIRMAN pro tempore (Mr. McFALL). The question is on the amendment offered by the gentleman from New York (Mr. ABZUG).

The amendment was rejected.

AMENDMENT OFFERED BY MR. ICHORD

Mr. ICHORD. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. ICHORD: On page 34, strike lines 7 through 11 and insert the following in lieu thereof:

"(2) Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) of this section: *Provided, however*, That if any individual is denied any right, privilege, or benefit that he would otherwise be entitled by Federal law, or for which he would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence."

(Mr. ICHORD asked and was given permission to revise and extend his remarks.)

Mr. ICHORD. Mr. Chairman, again I wish to commend the gentleman from Pennsylvania (Mr. MOORHEAD) and the gentleman from Illinois (Mr. ERLENBORN), as well as the members of the committee and the staff, for the very superb job they have done in balancing the rights of the individual against the rights of society in general and protecting the privacy of the individual.

All this amendment does is to protect the investigatory material of investigating agencies such as the FBI from being raided by thousands and perhaps tens of thousands of persons for no legitimate purpose.

I explained the amendment in general debate, and, Mr. Chairman, the language of this amendment has been worked out in conjunction with the managers of the bill, the gentleman from Pennsylvania (Mr. MOORHEAD) and the gentleman from Illinois (Mr. ERLENBORN).

The purpose of this amendment is to protect our investigative agencies from activities which I do not believe is an exaggeration to say might seriously impair if not destroy their function in carrying out their vital work. The amendment would both protect this work and, at the same time, do so consistently with the attainment of the purposes and

objectives of the bill. The provisions of the bill, particularly subsection (b), provides complete and adequate protection against improper or injurious dissemination of information beyond the legitimate uses of the Federal agencies maintaining them. My amendment in no way affects this laudable purpose, or those provisions against disclosure which fully protect the individual affected by prohibiting any improper use of investigatory material.

All that the amendment does is to protect the investigatory material from being raided by thousands and perhaps tens of thousands of persons for no legitimate purpose. I assure the Members that the investigative materials would be raided by the host of persons, including subversives, who would merely seek to ascertain the extent of coverage and method and adequacy of operation of our intelligence forces. This improper raiding of the investigatory files will be prohibited by my amendment, but at the same time individuals who have the legitimate need and purpose for the disclosure to them of the information is preserved. The amendment provides that in any case where an individual is denied any right, privilege, or benefit that he would otherwise be entitled by Federal law, as a result of the maintenance of such material, he will be entitled to the information, to the extent, of course, that the identity of confidential sources will be protected.

Mr. MOORHEAD of Pennsylvania. Mr. Chairman, will the gentleman yield?

Mr. ICHORD. I yield to the gentleman from Pennsylvania.

Mr. MOORHEAD of Pennsylvania. Mr. Chairman, I understand that this amendment is also subject to the colloquy we had in general debate concerning protection of dissenters under the first amendment; is that correct?

Mr. ICHORD. The gentleman is correct. This is meant in no way to harm the first amendment rights of any American.

Mr. MOORHEAD of Pennsylvania. Mr. Chairman, with that understanding, I have no objection to the amendment.

The CHAIRMAN pro tempore (Mr. McFALL). The question is on the amendment offered by the gentleman from Missouri (Mr. ICHORD):

The amendment was agreed to.

AMENDMENT OFFERED BY MR. GUDE

Mr. GUDE. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. GUDE: Page 36, line 6, after the period, insert the following:

"(n) Federal Privacy Commission

"(1) Establishment of Commission—

"(A) There is established as an independent agency of the executive branch of the government the Federal Privacy Commission.

"(B) (1) The Commission shall be composed of five members who shall be appointed by the President, by and with the advice and consent of the Senate, from among members of the public at large who, by reason of their knowledge and expertise in any of the following areas: civil rights and liberties, law, social sciences, and computer technology, business, and State and local government, are well qualified for service on the Commission and who are not otherwise officers or employees of the United States. Not more than three of the members of the Commis-

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